IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

M.C.C. No. 143 /2006

(Arising out of the writ petition No.3251 of 1994)

PETITIONERS
APPLICANTS

1. Smt Rajeshwari Agrawal, Widow of S.K. Agrawal, Aged about 52 years.
2. Rajesh Agrawal, Aged about 31 years.
3. Brijesh Agrawal, Aged about 29 years.
4. Umesh Agrawal, Aged about 27 years.
5. Shivendra Agrawal, Aged about 26 years.

All 2 to 5 are sons of Shri S.K. Agrawal (Sole Petitioner) and resident of Purani Basti, Baniapara, Raipur (C.G.)

P.R. No. 493/06 Presented by Shri ... dated 9/8/06

VERSUS

RESPONDENTS
OPPOSITE PARTIES

1. Central Bank of India,
   A Nationalized Bank, Having its Central Office at Chandramukhi, Nariman Point, Mumbai 400021.
2. The General Manager,
   Central Bank of India,
   Central Office at Chandramukhi, Nariman Point, Mumbai 400021.
3. The Deputy General Manager, Zonal Office, Central Bank of India 33, Netaji Subhash Road, Kolkata 700001

APPLICATION FOR REVIEW OF THE ORDER PASSED BY THE HON'BLE JUSTICE SHRI S.K. AGNIHOTRI ON 19/1/06 IN WRIT PETITION NO.3251/94

(a)

AFR

31.3.06

HIGH COURT OF CHHATTISGARH AT BILASPUR

(24)

M. C. C. No. 143 of 2006

Applicants		Smt. Rajeshwari Agrawal & others
	Versus	
Respondents		Central Bank of India & others

Post for order on 31st March, 2006.

Sd/-
Satish K. Agnihotri
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

M.C.C. No. 143 of 2006

(25)

Applicants Smt. Rajeshwari Agrawal & others

Versus

Respondents Central Bank of India & others

Single Bench : Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri Ravi Ranjan Sinha, Advocate for the applicants.

None for the respondents.

ORDER

(31st March, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The applicants have filed this review petition seeking review of the order dated 19th January, 2006 passed by this Court in Writ Petition No. 3251 of 1994 on the ground that there is apparent error on the face of the record.

2. It is stated that the norms for disposal of the disciplinary proceedings dated 10th December, 1990, addressed to the Zonal Managers/Regional Managers/Chief Managers of Bombay main office/Chief Managers of the Central Office of the respondent-Bank provides certain guidelines. The guideline No.2 'Disciplinary Authority' provides for submission of the findings of the enquiry officer to the disciplinary authority. It further provides that there is no need to change the disciplinary authority if the enquiry officer has

(26)

already submitted the findings to the disciplinary authority. Clause 2 reads as under:-

> "DISCIPLINARY AUTHORITY:
>
> The Disciplinary Authority has only to consider the findings of the Enquiry Officer, arrive at a decision and pass his final orders. Hence (i) In cases where the findings of the Enquiry Officer have already been submitted to the Disciplinary Authority, there is no need to change the Disciplinary Authority (ii) If the Findings have not been submitted to the Disciplinary Authority at the time of his transfer, in such cases the succeeding Chief Manager/Asstt. General Manager should adopt the chargesheet, appointment of Enquiry Officer/Presenting Officer etc. by issuing suitable notification and act as Disciplinary Authority.
>
> Notwithstanding what is stated above, if the Disciplinary Authority is transferred on promotion, the succeeding Chief Manager/Asstt. General Manager will act as Disciplinary Authority, after issuing suitable notification."

This circular was filed as Annexure P/9 to the main petition.

3. Learned counsel appearing for the review applicants submitted that the order passed by one Shri S. R. Narayanan, who had joined the post of Zonal Officer, was appointed in place of Shri P. R. Sethi, as disciplinary authority, has no competence to pass the order of punishment in view of the guidelines issued by the respondent-Bank. It was further submitted that the findings of the enquiry officer was submitted to Shri P. R. Sethi on 26.9.1992 and thereafter Shri P. R. Sethi was transferred to some other place and in his place Shri S. R. Narayanan was appointed as Zonal Manager. The Zonal Manager, being disciplinary authority, in normal circumstances, pass the order of punishment but in the facts of the present case when the enquiry report was submitted to his predecessor before

(27)

26.9.1992, the order ought to have been passed by Shri P. R. Sethi, himself.

4. After having heard learned counsel for the applicants and perusing the records it is found that during argument in the course of hearing the writ petition, learned counsel for the applicants/writ petitioners was asked specifically as to who was the competent authority to pass the order of punishment, learned counsel was not in a position to point out the same at that time. Now, the question that arises for decision is, "as to whether further contention/argument can be entertained in review petition ?. It is well settled principle of law that review cannot be sought for the purpose of rehearing and for a fresh decision on the case.

5. The Supreme Court in the case of **M/s Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi** { (1980) 2 S.C.C. 167} in para-8 observed as under:-

> "8. It is well settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so: Sajjan Singh v. State of Rajasthan[14]. For instance, if the attention of the Court is not drawn to a material statutory provision during the original hearing, the Court will review its judgment: G.L. Gupta v. D. N. Mehta[15]. The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice: O. N. Mohindroo v. Distt. Judge, Delhi[16]. Power to review its judgments has been conferred on the Supreme Court by Article 137 of the Constitution, and that power is subject to the provisions of any law made by Parliament or the rules made under Article 145. In a civil proceeding, an application for review is entertained only on a ground mentioned

in Order 47 Rule 1 of the Code of Civil Procedure, and in a criminal proceeding on the ground of an error apparent on the face of the record (Order XL, Rule 1, Supreme Court Rules, 1966). But whatever the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except "where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility": Sow Chandra Kante v. Sheikh Habib[17]"

6. Review lies on any of the grounds specified under Order 47 Rule 1 of the Code of Civil Procedure which provides:-

"1. Application for review of judgment.—(1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

(Explanation.---The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any

29

other case, shall not be a ground for the review of such judgment.}"

7. The Supreme Court in **Government of T.N. and others Vs. M. Ananchu Asari and others** {(2005) 2 SCC 332} observed as under:-

"3. .....If the petitioners failed to furnish the necessary material even during the pendency of appeal in this Court, that is no ground to review the judgment....."

8. In the case of **Kerala State Electricity Board Vs. Hitech Electrothermics & Hydropower Ltd. and others** {(2005) 6 S.C.C. 651} the Supreme Court observed as under:-

"10. ....."To permit the review petitioner to argue on a question of appreciation of evidence would amount to converting a review petition into an appeal in disguise."

9. From the above-stated observations, made by the Supreme Court, it is crystal clear that the review petition cannot be entertained for rehearing the case while considering further submission of the learned counsel. In the present case, learned counsel for the petitioners, at the time of argument in writ petition had failed to make any submission in respect of the issue raised in the review petition. Learned counsel for the petitioners, as stated, was clearly not in a position to point out as to who was the competent authority, in the course of hearing of the writ petition.

10. For the reasons stated above, the review petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur